UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1999/378
5 April 1999
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 5 APRIL 1999 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

This letter constitutes the report to be submitted pursuant to paragraph 8 of Security Council resolution 1192 (1998).

On 27 August 1998, the Security Council adopted resolution 1192 (1998), in which it welcomed the initiative for the trial of the two persons charged with the bombing of Pan Am flight 103 before a Scottish court sitting in the Netherlands, as contained in the letter dated 24 August 1998 from the Acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America and its attachments, and the willingness of the Government of the Netherlands to cooperate in the implementation of the initiative.

In that resolution, the Security Council called upon the Government of the Netherlands and the Government of the United Kingdom to take such steps as were necessary, including the conclusion of arrangements with a view to enabling the court sitting in the Netherlands to exercise jurisdiction in respect of the trial of the two persons charged with the bombing of Pan Am flight 103. As has already been reported, that request has already been met. On 18 September 1998, the Government of the Netherlands and the Government of the United Kingdom signed an agreement concerning a trial in the Netherlands before a Scottish court, and subsequently they enacted the necessary legislation to give effect to the agreement. I should like to express my deep appreciation to both Governments for their willingness, in the interest of finding a constructive resolution to the matter at hand, to take this unprecedented step enabling a national court of one country to conduct a trial in another country.

By resolution 1192 (1998), the Council further requested the Secretary-General, after consultation with the Government of the Netherlands, to assist the Libyan Government with the physical arrangements for the safe transfer of the two accused from the Libyan Arab Jamahiriya direct to the Netherlands.

I am pleased to inform the Security Council that, as requested in the resolution, all the necessary assistance has been provided to the Libyan Government and that today, 5 April 1999, the two accused have safely arrived in the Netherlands on board a United Nations aircraft. During the flight the two accused were accompanied by my representative, Mr. Hans Corell, the Legal

Counsel, who has been in charge of the operation. After the aircraft landed at 9.45 a.m., New York time, at Valkenburg airport in the Netherlands, the two accused were detained by the Dutch authorities, as provided for in paragraph 7 of Security Council resolution 1192 (1998), pending their transfer for the purpose of trial before the Scottish court sitting in the Netherlands.

I am also pleased to report to the Security Council that I have been informed by the French authorities through a letter dated 13 October 1998 from the Permanent Representative of France to the United Nations that in regard to the requests in the letter from the French authorities dated 20 December 1991 (A/46/825-S/23306), in reporting to the Council under paragraph 8 of Security Council resolution 1192 (1998), I might indicate that the conditions set forth in resolution 1192 (1998) had been met, without prejudice to the other requests concerning the bombing of Pan Am flight 103.

Today's development would not have been possible without the demonstration of goodwill on the part of all the parties concerned and without their commitment to resolving all the issues related to the implementation of Security Council resolution 1192 (1998) in a satisfactory and mutually acceptable manner.

As has already been reported informally to the members of the Security Council, given the complex and sensitive nature of the arrangements foreseen in resolution 1192 (1998), issues of both a political and legal nature were raised by the Libyan Government regarding the implementation of the resolution. Those issues needed to be clarified to the satisfaction of all the parties concerned in order to achieve understanding on the implementation of the resolution.

Legal issues as well as practical arrangements related to the implementation of the resolution were discussed in October and November 1998 between the United Nations Legal Counsel, Mr. Hans Corell, and a Libyan legal team, headed by Mr. Kamel Hassan Maghur. They were resolved to the satisfaction of all those concerned, with the assistance of the Governments of France, the Netherlands, the United Kingdom and the United States. I should like to express my appreciation to the Libyan legal team and to the States concerned for the constructive manner in which they addressed the complex issues before them.

With a view to achieving progress in resolving some of the sensitive political issues of concern to the Libyan Government, on 5 December 1998, I travelled to the Libyan Arab Jamahiriya and had fruitful and constructive discussions with the Leader of the Revolution, Colonel Muammar Qaddafi, and senior Libyan officials. Following my visit, I sought the assistance of the Governments of South Africa and Saudi Arabia, with which I have been constantly in close touch to coordinate our joint efforts in search of a fair solution to the pending issues.

I should like, therefore, to express my appreciation to the Government of the Libyan Arab Jamahiriya and all the other parties concerned for their willingness to demonstrate sufficient flexibility in arriving at a mutually acceptable solution. I should like, in particular, to express gratitude to the Governments of Saudi Arabia and South Africa for their efforts and assistance.

Paragraph 8 of Security Council resolution 1192 (1998) provides, inter alia, that if the Secretary-General reports to the Council that the two accused have arrived in the Netherlands for the purpose of trial before the Scottish court sitting in the Netherlands and that the Libyan Government has satisfied the French judicial authorities with regard to the bombing of UTA 772, the measures set forth in Security Council resolutions 748 (1992) and 883 (1993) shall be suspended immediately. As noted above, these requirements of the resolution have been met.

Paragraph 8 of resolution 1192 (1998) also reaffirms paragraph 16 of Security Council resolution 883 (1993), which provides that the Secretary-General is requested to report, within 90 days of the date of the suspension of the aforementioned measures, on compliance by the Libyan Arab Jamahiriya with the remaining provisions of Security Council resolutions 731 (1992) and 748 (1992) so that the measures might be lifted immediately if the Secretary-General reports that the Libyan Arab Jamahiriya has fully complied with those provisions.

Therefore, following the suspension of the measures referred to above, I shall proceed as expeditiously as possible with the preparation of this report. The Libyan Arab Jamahiriya has already provided extensive information and the necessary assurances on this matter, including to the Security Council.

Finally, let me also express the hope that the spirit of cooperation now established, will be maintained in future and that the start of the trial will mark the beginning of a process leading to the normalization of relations among all parties concerned for the benefit of the international community as a whole.

Accept, Sir, the assurances of my highest consideration.

(Signed) Kofi A. ANNAN